Erratum 61 OHIO ST. L.J. 1, 36–38 (2000)

The following paragraph should replace the paragraph that appeared at the end of page 36 and beginning of page 37 of Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy,* 61 OHIO ST. L.J. 1 (2000):

Under the most widely used civil rights statutes, relief is rarely available for violence against women. For example, 42 U.S.C. § 1983 requires a plaintiff to show that the challenged action was taken under color of state law, and 42 U.S.C. § 1985(3) requires her to show a conspiracy to deprive her of an independent, federally protected right. These elements are far from common in a typical rape or domestic violence case. On the contrary, most of the violence committed against women occurs in the context of the family and other ongoing relationships.[188] Relatively few acts of sexual assault and battering can be directly attributed to state actors. Almost no cases involve a conspiracy to deprive the plaintiff of a right protected by federal law, particularly since most of those rights require, in turn, a showing of state action.[189] Therefore, laws designed to protect individuals from state encroachment on their rights have done little to redress the harm inflicted on women by male violence. This omission is especially noteworthy because violence is among the principal ways in which women's inequality is expressed and perpetuated.[190]

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In addition, the following paragraph should replace the paragraph that appeared at the end of page 37 and beginning of page 38 of the same article:

There are, of course, cases of violence against women committed by state actors.[191] Even here, however, the reluctance to view violence against women as belonging to the public sphere is evident. For example, in the case of *United States v. Lanier,*[192] the Supreme Court considered an appeal by a state judge who had been convicted under a federal criminal civil rights statute for sexually

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[188] *See supra* Part II.

[189] *See, e.g., United Brotherhood of Carpenters,* 463 U.S. 825.

[190] *See supra* Part II.

[191] For a thoughtful discussion of sexual assault by state actors, see generally Johanna R. Shargel, United States v. Lanier: *Securing the Freedom to Choose,* 39 ARIZ. L. REV. 1115 (1997).

[192] 520 U.S. 259 (1997) (vacating judgment below and remanding for consideration of whether defendant had fair warning that his actions violated federal criminal civil rights statute).

assaulting five women.[193] All of the women were with Judge Lanier on official court business when he attacked them; each of the women was a former litigant or present or potential employee over whom Judge Lanier had authority by virtue of his office.[194] The crimes occurred in the judge's chambers during working hours, and in at least one instance, he committed a sexual assault while wearing his judicial robe.[195] Thus, it would seem that the element of action taken under color of state law was established beyond any question. However, when appealing his conviction before the Supreme Court, Judge Lanier claimed that his actions were not taken under color of law because acts of sexual assault are so unrelated to the role of a state judge that he could not have been acting under the pretense of exercising his legitimate authority when he committed them.[196] In other words, this argument goes, violence against women is intrinsically private and can never be considered part of the public, state sphere.[197] Additionally, Judge Lanier argued that his due process rights had been violated because he was deprived of fair warning that sexually assaulting women under his control would be considered a violation of their constitutional rights.[198] Again, this argument rests on the assertion that violence against women is a subject so remote from federal constitutional rights as to make it impossible to foresee the application of the latter to the former.[199]

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[193] *See id.* The statute under which Judge Lanier was convicted criminalizes the willful deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States by persons acting under color of law. *See* 18 U.S.C. § 242 (1994).

[194] *See Lanier,* 520 U.S. at 261.

[195] *See* United States v. Lanier, 33 F.3d 639, 646–50, 653 (6th Cir. 1994), *vacated and reh'g en banc granted,* 43 F.3d 1033 (6th Cir. 1995), *rev'd,* 73 F.3d 1380 (6th Cir. 1996) (en banc), *vacated and remanded,* 520 U.S. 259 (1997).

[196] *See* United States v. Lanier, No. 95-1717, 1997 WL 7587 at *25–*37 (Jan. 7, 1997) (transcript of oral argument of counsel for the defendant).

[197] The Supreme Court explicitly declined to address this argument. *See Lanier,* 520 U.S. at 264 n.2. However, the earlier decision of the three-judge panel below, which was vacated when the Sixth Circuit granted rehearing en banc, had specifically rejected Judge Lanier's argument that his actions were "personal pursuits." *See Lanier,* 73 F.3d at 1397 (Wellford, J., concurring in part and dissenting in part) (quoting *Lanier,* 33 F.3d at 653).

[198] *See Lanier,* 520 U.S. at 265–72.

[199] The Supreme Court remanded to the Sixth Circuit for a determination of whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal. *See Lanier,* 520 U.S. at 272. The Sixth Circuit later dismissed the appeal without a decision on the merits because Judge Lanier had become a fugitive. *See* United States v. Lanier, 123 F.3d 945, 946 (6th Cir. 1997), *cert. denied,* 523 U.S. 1011 (1998).